

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>TYLER ERDMAN,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>-against-</i></p> <p>ADAM VICTOR and THE BOARD OF MANAGERS OF MANHATTAN PLACE CONDOMINIUM,</p> <p style="text-align: right;"><i>Defendants</i></p>	<p>Case No.: 1:20-cv-04162-LGS</p> <p>DECLARATION OF JOHN F. WHELAN IN SUPPORT OF DEFENDANT ADAM VICTOR’S APPLICATION TO SEAL</p>
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Pursuant to 28 U.S.C. § 1746, **JOHN F. WHELAN**, declares, under the penalty of perjury, the following to be true:

1. I am associated with Schlam Stone & Dolan LLP, counsel to Adam Victor (“Victor”), a co-defendant in the above-captioned action. I submit this Declaration in support of Victor’s application to seal a portion of the Amended Complaint of Plaintiff Tyler Erdman and have it replaced on the docket with appropriate redactions.

2. Pursuant to Rule I.D.3 of this Court’s Individual Rules and Procedures for Civil Cases, a copy of the Amended Complaint with proposed redactions is attached hereto as Exhibit 1, and an unredacted copy of the Amended Complaint with proposed redactions highlighted is attached hereto as Exhibit 2.

3. Defendant Adam Victor is also a defendant in *Khatskevich v. Victor et al.*, Index No. 151658/2014 (the “Khatskevich Action”) in the Supreme Court of the State of New York, New York County, before Justice Shlomo Hagler. I am also counsel for Adam Victor in the Khatskevich Action.

4. In the Khatskevich Action, plaintiff Yevgeniya Khatskevich is suing Victor and several of Victor's companies for, among other things, sexual harassment, immigration status discrimination, and retaliation under the New York City Human Rights Law arising out of her alleged employment by Victor and his companies. Ms. Khatskevich is not a party to the instant action. Tyler Erdman is not a party to the Khatskevich Action.

5. Relevant excerpts from the Verified Complaint, dated March 18, 2014, in the Khatskevich Action are attached hereto as Exhibit 3.

6. In her Verified Complaint, dated March 18, 2014, Ms. Khatskevich alleges that Victor "... bragged about his supposed connections to the ... " Federal Bureau of Investigation ("FBI") and the Central Intelligence Agency ("CIA"), and implied that he was working with and had "sway" with them. (Ex. 3, ¶¶ 147 – 149.) Ms. Khatskevich also makes certain other allegations regarding things Victor allegedly told her about the FBI and CIA, and Victor's interactions with certain foreign diplomats. (*Id.*, ¶¶ 150 – 159.) Ms. Khatskevich alleges that Victor's boasts about his alleged connections to the CIA and FBI, among other things, were implied threats to her, and that Victor also told her that the FBI and CIA would assist in deporting her and otherwise retaliating against her. (*Id.*, ¶¶ 160 – 162; 220(h).)

7. On October 6, 2014, Victor brought an order to show cause to have the aforementioned allegations struck from the Verified Complaint or, alternatively, sealed from the public record. A true and correct copy of the affidavit from Victor submitted to the Court in support of that motion is attached hereto as Exhibit 4. In the affidavit, Victor asserted that the aforementioned allegations were intended to embarrass him into paying an unwarranted settlement, and that the allegations puts his safety and life in jeopardy when he travels to certain countries. (Ex. 4, ¶¶ 4, 8 – 10.)

8. At a proceeding on November 24, 2014, Justice Hagler denied Victor's motion without prejudice. A true and correct copy of the so-ordered transcript of the hearing related to that proceeding is attached hereto as Exhibit 5. At the proceeding, Justice Hagler stated that the motion was being denied without prejudice because there needed to be a "fuller record" as to why Victor could not answer the allegations in question. (Ex. 5 at 6:14-20.) However, Justice Hagler also allowed Victor to make a new motion under seal

9. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A true and correct copy of the Affidavit is attached hereto as Exhibit 6.

10. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. On November 8, 2016, Ms. Khatskevich brought a motion to unseal certain documents relating to Victor's second motion to seal, including the Affidavit. [REDACTED]

[REDACTED]²

13. Although the Affidavit was technically unsealed, it was not made accessible to the public on the electronic docket for the Khatskevich Action on the website for the New York State Unified Court System.

14. Plaintiff Tyler Erdman filed his Amended Complaint in the instant action on October 26, 2020. Paragraph 48 of the Amended Complaint quotes directly from the Affidavit. (*See* Ex. 6 ¶ 25.)

15. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

19. [REDACTED]

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20.

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21.

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22.

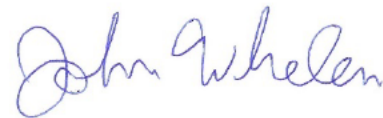
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dated: December 4, 2020
Brooklyn, New York



JOHN F. WHELAN